IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Kan Singh. Versus Bhim Singh.

S.B. Criminal Revision No. 261/2006 against the judgment dated 24-2-2006 passed by the Additional Sessions Judge, Nathdwara, in Criminal Appeal No. 24/2004.

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Date of Order: April 24, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. B.S. Deora, for the petitioner.
Mr. Ballu Singh, for the non-petitioner.

BY THE COURT:

This criminal revision under Section 397/401 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the judgment dated 24-2-2006 passed by the Additional Sessions Jduge, Nathdwara (for short, "the Appellate Court" hereinafter) in Criminal Appeal No. 24/2004, whereby the appeal filed by the petitioner against the judgment and order dated 27-11-2004 passed by the Additional Chief Judicial Magistrate, Nathdwara (for short, "the trial Court" hereinafter) in Criminal Case No. 115/2001 was dismissed and the conviction and sentence passed by the trial Court against the petitioner for the offence under Section 138 of the Negotiable

Instruments Act, 1881 (for short, "the Act" hereinafter) was affirmed. Aggrieved by the judgment and order impugned, the petitioner has filed the instant revision.

Complainant Bhim Singh has filed applications being S.B. Criminal Misc. Application No. 226/2006 and 227/2006 seeking permission to compound the offence as also the compromise. In the compromise, complainant Bhim Singh, who has been identified by his counsel Mr. Balu Singh, has stated that he has received the cheque amount from the petitioner and now nothing is due to be recovered from the petitioner and voluntarily he has compromised the matter with the petitioner. Petitioner is represented by his counsel Mr. B.S.Deora.

Complainant/non-petitioner submits that he has received the sum of Rs. 2,00,000/-, which according to the impugned order appears to be the cheque amount. The offence under Section 138 of the Act is compoundable under Section 147 of the Act. Section 147 of the Act reads as under:-

> "147. Offences to be compoundable.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable."

Sub-section (6) of Section 320 of the Code provides that a High Court or Court of Sessions acting in the exercise of its powers of revision under Section 401 may allow any person to compound any offence which such person is competent to

compound under this section. In the instant case, the complainant is the person competent to compound the offence and he has compounded the offence, therefore, the complainant is permitted to compound the offence.

The effect of compromise is acquittal as envisaged under sub-section (8) of Section 320 of the Code, which provides that the composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded. In this view of the matter, the revision deserves to be allowed.

In the result, the revision is allowed. The judgment and order of the trial Court dated 27-11-2004 passed in Criminal Case No.115/2001, which was affirmed by the Appellate Court vide impugned order dated 24-2-2006 passed in Criminal Appeal No.24/2004, are set aside and the petitioner is acquitted of the charge for the offence under Section 138 of the Act on the offence being compounded by the complainant/non-petitioner. The miscellaneous applications No. 226/2006 and 227/2006, as also the application for suspension of sentence, stand disposed of.

(H.R. PANWAR), J.

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